

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES CASSELL,

Plaintiff,

-against-

UMOH FIRM,

Defendant.

23-CV-8454 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court’s federal question jurisdiction, 28 U.S.C. § 1331. By order dated September 26, 2023, the Court granted Plaintiff’s request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees. For the reasons set forth in this order, the Court dismisses the action for lack of subject matter jurisdiction.

**STANDARD OF REVIEW**

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See Fed. R. Civ. P. 12(h)(3)*.

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits –

to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

### **BACKGROUND**

Plaintiff brings this suit against “Umoh Firm,” or its attorney, Uwem Umoh. Plaintiff’s claims arose in New York, in 2021. (ECF 1 at 5.) He alleges that “Mr. Umoh has robbed me of money I didn’t see from my cases.” (*Id.*) In response to a question on the form complaint about which of his federal constitutional or statutory rights were violated, Plaintiff writes, “Mental Health.” (*Id.* at 2.)

Plaintiff references documents attached to the complaint. In one such document, Plaintiff states that in July 2022, he gave Mr. Umoh information about his claim, but Mr. Umoh “held on to the case for 5 months then t[old] [him] that he isn’t taking the case.” (*Id.* at 8.) At that point, Plaintiff had “30 days left to file.” (*Id.*) Plaintiff’s claim is based on Defendant “holding it so long” and then declining to represent Plaintiff in the matter. Plaintiff seeks “\$50,00 from his

office to cover case.” (*Id.*) Plaintiff also alleges that he broke his “foot trying to run around for a lawyer” and seeks \$100 million in damages. (*Id.* at 6.)

## DISCUSSION

### A. Subject Matter Jurisdiction

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. §§ 1331 and 1332. Under these statutes, federal jurisdiction is available only when a “federal question” is presented or when plaintiff and defendant are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000. “[A]ny party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction.” *Manway Constr. Co., Inc. v. Hous. Auth. of the City of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983); *see* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative . . .”).

To invoke federal question jurisdiction, a plaintiff’s claims must arise “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A case arises under federal law if the complaint “establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 734-35 (2d Cir. 2007) (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)). Mere invocation of federal jurisdiction, without any facts demonstrating a federal law claim, does not create federal subject matter jurisdiction. *See Nowak v. Ironworkers Loc. 6 Pension Fund*, 81 F.3d 1182, 1188-89 (2d Cir. 1996).

Here, Plaintiff does not identify any federal constitutional or statutory basis for his claims. His allegations, at most, could be characterized as a state law claim for legal malpractice. Because Plaintiff does not allege any facts suggesting that he has a claim arising under federal law, the Court cannot exercise federal question jurisdiction of this action.

Plaintiff also does not allege facts demonstrating that the Court has diversity jurisdiction of this action. To establish jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that the plaintiff and the defendant are citizens of different states. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998). In addition, the plaintiff must allege to a “reasonable probability” that the claim is in excess of the sum or value of \$75,000.00, the statutory jurisdictional amount. *See* 28 U.S.C. § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006). Plaintiff does not invoke the Court’s diversity jurisdiction, and all parties appear to be citizens of New York. Plaintiff thus has not satisfied his burden of demonstrating that the Court has diversity jurisdiction of this action. The complaint is therefore dismissed for lack of subject matter jurisdiction.<sup>1</sup>

## **B. Leave to Amend**

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid

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<sup>1</sup> State courts are courts of general jurisdiction. This order, holding that federal courts lack subject matter of his claims, does not prevent Plaintiff from bringing his claims in state court.

claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)).

Plaintiff’s complaint gives no indication that the federal courts have subject matter jurisdiction of his claims. Because Plaintiff proceeds *pro se*, the Court will not enter judgment and will hold this matter open on the docket for 30 days to allow Plaintiff to file an amended complaint that either asserts a claim arising under federal law or that alleges facts showing that the parties are citizens of different states and the amount-in-controversy requirement is satisfied.

### CONCLUSION

Plaintiff’s complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). The Court will not enter judgment and will hold this matter open on the docket for 30 days to allow Plaintiff to file an amended complaint that either asserts a claim arising under federal law or that alleges facts showing that the parties are citizens of different states and the amount-in-controversy requirement is satisfied. If Plaintiff fails to file an amended complaint, the Court will enter judgment dismissing this action for lack of subject matter jurisdiction.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: November 6, 2023  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge